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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,698	03/01/2002	David H. Worledge	2218.002	4889

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EXAMINER
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HARRIS, STEPHANIE N

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,698

Applicant(s)

WORLEDGE ET AL.

Examiner

Stephanie Harris

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 12, 13, 17-19, 21-23, 25-33, 40-43, 45, 46 is/are rejected.
- 7) ☒ Claim(s) 6-8, 10, 11, 14-16, 20, 24 and 34-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 17-19, 21-23, 25-33, 40-43, 45, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoltz (USPN 5524968) in view of Sutherland (USPN 4784436).

Regarding claim 1, Stoltz discloses an adjustable chair that comprises a cage (10) as seen in Figure 3. A multiply positionable coupler (27) is removably connectable to the cage (Col 2, lines 27-37). Three variable configurable legs (27) are mounted on the multiply positionable coupler. Each of the three variably configurable legs is movably fastened to the multiply positionable coupler at more than one location as seen in Figure 1.

Regarding claim 5, the multiply positionable coupler includes a support assembly formed with a first tube (23) having proximal end, a distal end, and a circumferential surface between the proximal end and distal end as seen in Figure 1.

Regarding claim 17, a support assembly, including a first tube (23), is pivotally connectable to the plurality of tines. A carriage device, with a plurality of legs pivotally attached, is slidably and rotationally positionable on the first tube of the support assembly as seen in Figure 1. Regarding claim 18, the support also includes an upper

collar (20) that is slidably engaged with the first tube. Regarding claim 19, the support assembly includes means (13) that can be used to movably interconnect the support assembly to the cage as seen in Figures 1 and 2.

Regarding claim 21 the support assembly includes a first retaining ring (20) connected to an end of the first tube (23) that can prevent disengagement of the support assembly to the first tube. Regarding claim 22, the support assembly includes a second retaining ring (20) that is engageable with the first tube (23). Regarding claim 23, the support assembly includes a lower collar that is slidably engageable with the first tube (23). All elements refer to Figure 3.

Regarding claim 25, the support assembly includes means (17, 31) to movably connect the plurality of legs (27) to the support assembly. Regarding claim 26, the carriage device includes a second tube (located between elements 17 and 31) that is slidably engageable with the first tube. Regarding claim 27, the carriage device includes a fixed collar (located between elements 17 and 31) attached to one end of the second tube for movably connecting the plurality of legs (27). Regarding claim 28, the carriage device includes means (17, 31) for positioning the plurality of legs (27). All elements refer to Figure 3.

Regarding claim 31, the positioning mechanism includes an upper collar (22) that is slidably engageable with the first tube (23). Regarding claim 32, the positioning means includes a first retaining ring (located between elements 17 and 31) that abuts an end of the first tube. Regarding claim 3, the positioning means (17, 31) includes a

plurality of arms that are pivotally connectable to the upper collar. Regarding claim 40, the positioning means includes a plurality of struts (17, 31) that are pivotally connectable to a barrel (23) and to the adjustable legs (27). Regarding claim 41, the positioning means includes a retaining ring (20) that is attached to a second end of the tube (23).

Stoltz shows all of the teachings of the claimed invention but fails to show the use of a ribbed cage and a support member. Sutherland discloses a ribbed cage (22, 40, 16) and a support member (50, 48) that is removably engagable with the ribbed cage as seen in Figures 1 and 2. Regarding claim 2, the ribbed cage includes a plurality of tines or ribs (22) having a leading end and a following end. Regarding claim 3, the plurality of tines further comprises a removable swivelable boom (40) that is connectable to the following end of the tines as seen in Figure 2. Regarding claim 4, the support member includes a seat portion (50) and back portion (48) for supporting a person as seen in Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cage of Stolz with the ribbed cage and engaging support member, as shown by Sutherland, in order to provide ease of disassembly for the occupant of the chair.

Regarding claims 42, 42, 45, and 46, Stoltz in view of Sutherland discloses all of the claimed structure of the instant invention. Stoltz in view of Sutherland lacks only the specifically recited method steps.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the chair as disclosed by the combination of Stoltz in view of Sutherland by the claimed method steps. Such a modification provides a conventional and efficient method of using the device as disclosed by the combination of Stoltz in view of Sutherland.

Claims 9, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoltz (USPN 5524968) in view of Sutherland (USPN 4784436) and in further view of Liao (USPN 5816556).

Stoltz in view of Sutherland has been described above. Stoltz in view of Sutherland shows all of the teachings of the claimed invention but fails to show the use of an upper and lower collar.

Regarding claim 9, a lower collar (16) is slidably engageable with the first tube. The lower collar is formed with an exterior surface, an interior surface, a lower edge, an annular face, a cavity between the lower edge and interior surface, and an opening formed through the exterior surface, interior surface and cavity coincident with the longitudinal axis of the first tube as seen in Figure 3.

Regarding claim 12, the multiply positionable coupler includes a carriage device formed with a second tube (20) having an interior end, a posterior end, and an outer surface therebetween as seen in Figure 3. Regarding claim 13, further comprises a fixed collar (50) attached to the posterior end of the second tube. The fixed collar is

formed with a forward surface, a rear surface, a body therebetween, a duct formed through the approximate center of the body, and a plurality of slits formed in the body extending radially toward the longitudinal axis through the center of the second tube as seen in Figure 6.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tube of Stoltz in view of Sutherland with the an upper and lower collar, as shown by Liao, in order to provide a stopping means for the height adjustability of the chair.

#### ***Allowable Subject Matter***

Claims 6, 7, 8, 10, 11, 14-16, 20, 24, and 34-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 11/4/03 have been fully considered but they are not persuasive.

In response to Applicant's argument Sutherland *does not disclose a plurality of tines that forms a ribbed cage* the examiner respectfully disagrees. As seen in Figures 1 and 2, Sutherland discloses a ribbed cage (22, 40, 16) that is comprised of a plurality of tines (22).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *a multiply positionable coupler that permits rotation clockwise and counter clockwise around a principal longitudinal axis*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the multiply positionable coupler as disclosed in Stoltz is "... *no more than a tripod unit comprising three legs...*", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to Applicant's argument Stoltz *does not disclose a multiply positionable coupler with a first tube* the examiner respectfully disagrees. As seen in Figure 1, the multiply positionable coupler has a first tube (23).

In response to Applicant's argument that *no component is disclosed as being a support assembly*, the examiner respectfully disagrees. As noted in the previous office action on page 3, elements (23, 20, 13) as disclosed in Stoltz as seen in Figures 1 and



2, collectively comprise the support assembly. The combination of Stoltz in view of Sutherland allows for the pivotability of the tines via tube (23) as disclosed in Stoltz.

In response to Applicant's argument that *Stoltz does not disclose a carriage device with a plurality of tines*, applicant is respectfully reminded that the combination of Stoltz in view of Sutherland provides for the plurality of tines. The carriage device has been disclosed in Stoltz as the plurality of legs (27), which are pivotally attached to elements (17, 31) as seen in Figure 1. The second tube (located between elements 17 and 31) has been disclosed in Stoltz.

In response to Applicant's argument that *Sutherland does not disclose a ribbed cage with a plurality of tines*, the examiner respectfully disagrees. As noted in the previous Office Action, Sutherland discloses ribbed cage (22, 40, 16) with a plurality of tines (22) as seen in Figures 1 and 2. The use of a fabric back panel and seat panel does not negate the disclosure of a plurality of tines. Applicant is also respectfully that elements (22) has been disclosed as the plurality of tines and not the fabric back and seat panels (50, 48).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *the support assembly is pivotally connected to the plurality of tines*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the modification of the cage as disclosed by Stoltz in view of the ribbed cage as disclosed by Sutherland provides ease of disassembly for the chair.

In response to Applicant's argument *the combination of Stoltz in view of Sutherland will change the principle operation of the prior art invention*, the examiner respectfully disagrees. The Examiner is of the opinion that the modification of a ribbed cage with a plurality of tines in place of a cage that does not have a plurality of tines would not change the principal operation of the Stoltz primary reference. Additionally, Applicant has failed to show how the modification of Stoltz in view of Sutherland would hinder the principle operation of Stoltz.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortenedx statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie Harris whose telephone number is 703-308-0827. The examiner can normally be reached on Monday-Friday from 7am to 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo, can be reached on (703) 808-0827. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SNH

January 6, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600

Application/Control Number: 10/087,698

Art Unit: 3636

Page 11